

Small Business Administration

§ 107.590

Debenture purchased or guaranteed by SBA after July 1, 1991, SBA's unsecured claims against you, as a Debentureholder or as subrogee, are subordinated only in favor of non-Associate lenders; and, to the extent that your indebtedness to such lenders exceeds the lesser of \$10,000,000 or 200 percent of your Regulatory Capital (determined as of the date your Debentures were purchased or guaranteed), SBA's unsecured claims enjoy parity with those of other unsecured creditors, except with respect to indebtedness created on or before July 1, 1991.

(2) In order to induce others to lend you money after your Debenture has been purchased or guaranteed, SBA may agree in writing on a case-by-case basis to subordinate its unsecured claims, on such terms as it may determine, in favor of one or more of your Associates, or in favor of other lenders in excess of the amounts mentioned in paragraph (b)(1) of this section.

(3) SBA reserves the authority to refuse to subordinate its claims if it determines, at the time you request your Debenture be purchased or guaranteed, that the exercise of reasonable investment prudence and your financial condition warrant such refusal.

§ 107.570 Restrictions on third-party debt of issuers of Participating Securities.

(a) *General.* Temporary Debt is the only debt (other than Leverage) that you are permitted to incur if you have applied to issue Participating Securities or if you have outstanding Participating Securities. For additional rules governing secured Temporary Debt, see § 107.550.

(b) *Definition of Temporary Debt.* Temporary Debt means your short-term borrowings if:

(1) Such borrowings are for the purpose of maintaining your operating liquidity or providing funds for a particular Financing of a Small Business;

(2) The funds are borrowed from a regulated financial institution or a regulated credit company (or, if approved by SBA on a case-by-case basis, from non-regulated lenders including shareholders or partners);

(3) Your total outstanding borrowings (not including Leverage) do

not exceed 50 percent of your Leverageable Capital; and

(4) All such borrowings are fully paid off for at least 30 consecutive days during your fiscal year so that you have no outstanding third-party debt for 30 days.

VOLUNTARY DECREASE IN LICENSEE'S REGULATORY CAPITAL

§ 107.585 Voluntary decrease in Licensee's Regulatory Capital.

You must obtain SBA's prior written approval to reduce your Regulatory Capital by more than two percent in any fiscal year, unless otherwise permitted under §§ 107.1560 and 107.1570. At all times, you must retain sufficient Regulatory Capital to meet the minimum capital requirements in the Act and § 107.210, and sufficient Leverageable Capital to avoid having excess Leverage in violation of section 303 of the Act and §§ 107.1150 through 107.1170.

REQUIREMENT TO CONDUCT ACTIVE INVESTMENT OPERATIONS

§ 107.590 Licensee's requirement to maintain active operations.

(a) *Activity test.* You must conduct active operations, as determined under this § 107.590, as a condition of your license. You will be considered active if:

(1) During the eighteen months preceding your most recent fiscal year end, you made Financings totaling at least 20 percent of your Regulatory Capital; or

(2) Your idle funds did not exceed 20 percent of your total assets (at cost) at your most recent fiscal year end.

(b) *Permitted exceptions to activity requirements.* You are considered active if your failure to meet the requirements in paragraph (a) of this section is the result of one or more of the following factors:

(1) Your excess idle funds are the result of the receipt, within the previous nine months, of realized gains, repayments, additional capital contributions, or Leverage.

(2) It is necessary for you to maintain excess idle funds to conduct your operations because: